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Supreme Court, U.S.
FILED

No. 04-1443 APR 1 - 2005

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

GUADALUPE MADRID
Petitioner
v.

ALBERTO GONZALES ATTORNEY GENERAL
Respondent

On Petition or a Writ of Certiorari To The United States Court of Appeals For The Ninth Circuit

USCA No. 02-72740
Agency No. A74 800 385

SUPPLEMENTAL APPENDIX

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Los Angeles, California

August 27, 1998

File A 74 800 385

In the Matter of

GUADALUPE MADRID
Respondent

IN DEPORTATION
PROCEEDINGS

CHARGE: Section 241 (a) (1) (B)
entering without inspection

APPLICATION: Suspension of
deportation

ON BEHALF OF
GOVERNMENT:

IN BEHALF OF RESPONDENT:

Elena Kusky,
Esquire

Jesse Esparza

ORAL DECISION OF THE
IMMIGRATION JUDGE

The respondents are a mother and son, mother age 40, son, young teenager, both natives and citizens of the country of Mexico. The respondents entered the United States without inspection by an Immigration Officer on November 8, 1983, at San Ysidro, California. At a Master Calendar hearing held before the Immigration Judge on

January 10, 1977, the respondents admitted the factual allegations, except that they denied being inspected. However, regardless, there was a concession that they were in violation of Section 241 (a) (1) (B), having fallen out of status. So, regardless, the Court finds that they are both deportable by clear, convincing and unequivocal evidence.

For relief, the respondents have asked this Court to suspend their deportation, and alternatively that they should be accorded the right to depart the United States voluntarily.

In order to prevail in the suspension application, the respondents must show that they have lived in the United States continuously for seven years, that they possess good moral character, and that they would suffer extreme hardship if they were to be asked to return to Mexico.

The Court has received, actually, two applications for suspension of deportation, one for the son, and one for the mother. The son entered the United States at three years and is now seventeen, he has no children, he has no qualifying relative within the meaning of suspension, a Statute 244. He has a sister in the United States, who is a U.S. citizen, he has lived here his entire life, he speaks fluent English, at the time of his particular merit's hearing, was a junior in high school. The young man has not been arrested, the young man does not in fact speak Spanish and he has hopes to involve himself in law enforcement, if he is able to stay in the United States. Respondent's father is somewhat estranged and lives with the family at various times, his father indicates that he wants to go to Mexico.

He testified himself, he has a fairly good B average, 2.5, he has been involved in the orchestra, retail

marketing, he would like to be in the military, he would like to go to college, he has taken the Marine test, he has scored 79, with the average of 65. When asked why he could not involve himself in the military in Mexico and he correctly answered that because of the corruption that is present in the Mexican military.

On balance, pursuant to the Matter of O-J-O specifically, regardless of his mother's case the Court would find that it would constitute extreme hardship for this gentleman to be asked to return to Mexico on the basis of his clearly established life here, time here, and what he has done, what he hopes to do, I find that it would be hurtful to him in an extreme way, if he were to return and therefore, I will grant his case on a conditional basis, pursuant to the numbers being available, with an alternative order of voluntary departure for 120 days, should he not comply, and a further order of deportation, should he be deemed ineligible on the original charge.

With regard to the mother's, or the woman's, Ms. Madrid's obligation, she presently is age 40, entered at age 27, or 28, she has had these proceedings interpreted to her in the Spanish language. She entered the United States with her visa, according to her testimony, she never left, she was married, her husband has been here already, he has been illegal throughout these proceedings. They also have a daughter, Priscilla, who is born in 1986 which would make her 12 years old. The daughter is currently going to school, the daughter is acculturated in the United States havi8ng lived here her entire life.

The female respondent has not worked in the past, she has received public assistance, an issue which I will discuss momentarily. She is currently employed at a preschool, known as Playmates, she has worked there for five years, where she helps with babies, earns $225.00 a week, she also works at Dell Taco. The household is

receiving $2,200.00 monthly, however it does not look like this is the case now because the husband is no longer with them or has indicated that, at least, he wishes to return to Mexico.

The female respondent indicates that she is not really involved very much with the community as she is a single parent, working, she does go to church, same church for ten years. She has her parents in Mexico, she has ten siblings, all of whom live in Mexico, they all enjoy good health. When asked with regard to what hardship she would suggest, that she mentioned her son, but he has been taken out of the equation. She mentioned her daughter, and she said that the jobs are "tough" with not many opportunities.

The issues in this case revolve around tax returns that were filed and the welfare. With regard to the tax returns, the respondent filed as head of household, apparently she was not eligible to do so because her husband was living with her and therefore, she has received money that was no hers. Second issue is that she has received welfare and the Government contends that it would be abusive judicial discretion to allow her to stay in the United States after receiving public assistance for seven years that she lived in the United States. These points were made at the last hearing, a few months ago, the respondent has only provided a letter from the County of Los Angeles that affirms that she has been on public assistance but it has not affirmed that she is paying it back. She has not, also, paid back any of the tax money.

I do not find that the respondent is statutorily warrant on the issue of good moral character because of the payment of taxes and the public assistance. I feel that this weighs in the demand judicial discretion. Without any other concept, I would find that it would not be an extreme hardship for the female respondent herself, if she

were asked to go to Mexico. She is not necessarily acculturated herself here, as she has abused her time in the United States with regards to receiving these benefits. But there are other factors that must be considered as well. One factor is that she was living with a man who is not responsible, apparently, according to the meek documentation that we have received on this issue and the testimony that seems sometimes somewhat contradictory, especially with regard to the taxes and the amount of time that he has actually lived in the home. We also have, indeed, a single mother who has a child in high school and one who should be about entering junior high school at the present time. With regard to the U.S. citizen child, the Court would find extreme hardship with regard to her, if the mother was asked to go back to Mexico, because of her age, the amount of time she has lived here and so forth and so on. Having found then that the respondent is statutorily eligible, the case falls into the hands of the discretion of the Court.

With regard to the discretion of the Court, the Court must weigh all factors, the Court is extremely displeased with the respondent, that she has not seemed to take the proceedings seriously enough to either seek advice of her own counsel to seek the advice of what this Court has offered her in rectifying the tax situation and the public assistance situation. The Court is further not certain of the female respondent has been as candid with the Court as possible with regard to the dates that her husband has been wit her and with regard to the other factors. The benefit of being able to stay in the United States is one that is not taken lightly either by this Court or by the Law as a while. To grant this female respondent's case is to validate her living in the United States and abusing the tax system and abusing the system of public support. To deny relief to this woman, then, would as I have said, would cause extreme hardship to both of her children. However, in balancing both of these

factors, the Court cannot validate the behavior that she has had in the past with regard to the taxes and with regard to the public assistance, especially due to the fact, that she has been given ample opportunity to rectify it, and has given this Court no answer whatsoever as to why it is that she has not done so. It is on that basis and on that basis alone that the discretion of this Court in balancing all the factors will not grant her application for suspension of deportation. The following orders are hereby issued.

ORDER

II IS HEREBY ORDERED that the male respondent's, Elizandro Zamora Madrid, A74 800 384, application for suspension of deportation is conditionally granted as I mentioned in my decision orally.

IT IS FURTHER ORDERED that the respondent's Guadalupe Madrid, A 74 800 385, application for suspension of deportation is denied. She will be granted the privilege of voluntary departure until January 1,1999, with alternative order of deportation to Mexico should she not comply. It is so ordered.

"s/_____"
RICHARD D. WALTON
Immigration Judge

A 74 800 385 August 27, 1998